HON'BLE SRI JUSTICE P.S. NARAYANA

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+W.P.No.6339 of 1997

%03-12-2004

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Padmasri Finance, rep. by Managing Partner-P.Pullaiah

Chowdary, S/o Ramaiah, R/o Ongole, Prakasam District & 9 others.

..... Petitioners

VERSUS

$ The District Collector, Ongole, Prakasam District

and two others.

.....Respondents

< GIST:

> HEAD NOTE:

! **Counsel for petitioner : Mr.T.RAJENDRA PRASAD**

^ **Counsel for Respondents: G.P. FOR REVENUE**

? Cases referred

NIL

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE THIRD DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 6339 of 1997

Between:

1 Padma Sri Finance, rep. by Managing Partner-P.Pullaiah chowdary, S/o.Ramaiah, R/o. Ongole, Prakasam.
2 Ambika Finance Corp., Rep. by M.D.-Avula Srinivasulu,

S/o. Venkateswarlu, D.No.39-4/B, Gopalanagaram, 1st lane,
Ongole, Prakasam.

3 Arunodya Finance Corporation, Rep. by M.D.- Vadlamudi Tirumala Rao.
S/o. Tirupathi rao. Market centre,
Ongole, Prakasam.

4 Jaya Barathi Finance Corp., REp. Kolluri Srinivasa RAo,
Gopalnagaram 1st Lane, R/o. Ongole, Prakasam.

5 Harsha finance Corp., Rep. Chapala Seshaiah.
S/o. Gangaiah, K.P.Road, Ongole, Prakasam Dist

6 Aronodaya Financers, Rep. J.Venkata RAo.
S/o. Yanadhi, Dattasai Complex, Trunk road,
Shop No.4, Ongole, Prakasam.

7 Venkata sai Financers, Rep. Kotari Janardhan,
S/o. Venkat Rao. Market Centre,
D.No. 39/4/40, Ongole, Prakasam.

8 Vaibhav Finance, Rep. Sunkara Rambabu,
S/o. Varalayya, Market Centre,
D.No. 37-1-143, Ongole, Prakasam.

9 Venkata Sai Krishna Finance, Rep. Nakala pitchaiah,
S/o. Jalaiah, Eslampet,
D.No. 37-1-159, Ongole, Prakasam.

10 Suvarna Lakshmi Finance Corporation, Rep. B.seetha Ramaiah,
S/o. Rangaiah, Room No.27,
Ruby Building near Srinivas Theatre Road, Ongole,Prakasam.

..... PETITIONERS

AND

1 District Collector, Ongole, Prakasam District.
2 Revenue Divisional Officer, Ongole, Prakasam Dist
3 Superintendent of Police, Ongole, Prakasam Dist

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ order or direction more particularly one in the nature of writ of mandamus declaring the proceedings of the 2nd respondent dt 20-11-1996 in Rc.F.No.1201/96 as illegal arbitrary unconstitutional void malafide one and without any power of jurisdiction and also declare dt 18-11-1996 in Rc.No.2498 of 1996 in illegal and consequently set-aside the same.

Counsel for the Petitioners: MR.T.RAJENDRA PRASAD

Counsel for the Respondents: GP FOR REVENUE

The Court made the following :

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ORDER:

The Writ Petitioners filed the present writ petition for issuance of Writ, order or direction more particularly in the nature of Writ of Mandamus declaring the proceedings of the 2nd respondent dated 20-11-1996 in Rc.F.No.1201/96 as illegal, arbitrary, unconstitutional, void, malafide and without any power or jurisdiction and to declare the proceedings of the 2nd respondent dated 18-11-1996 in Rc.F.No.2498/96 as illegal and consequently set aside the same and to pass such other suitable orders.

The petitioners stated that they are eking out their livelihood by doing finance

business and they are educated unemployed persons and by sale of some of their properties and taking loans from their nearest relatives, they have started finance business and they have been advancing loans at reasonable rate of interest. It is also stated that in the month of November 1996, the petitioners received summons from 2nd respondent requiring them to attend before him to answer charge under Sections 107 and 109 of the Code of Criminal Procedure (hereinafter referred to as 'Code' for the purpose of convenience). Though several other details have also been furnished, the main ground of attack is that the 2nd respondent has no authority or jurisdiction to issue such notices and to call upon the petitioners to be present before him. It is no doubt stated that this action was initiated by the 2nd respondent at the instance of the 1st respondent.

Sri T.Rajendra Prasad, the learned Counsel representing the petitioners, would submit that the provisions of either 107 or 109 of the Code are not attracted and the 2nd respondent has no authority or jurisdiction to initiate such action at the instance of certain parties. The learned Counsel also pointed out that the same was published in the newspapers, N.B.Ws. also had been issued and the impugned proceedings are wholly illegal, arbitrary, and unconstitutional, hence the same are liable to be quashed.

The learned Additional Government Pleader for Revenue on the contrary would contend that in the interest of Society at the instance of the 1st respondent, the 2nd respondent had initiated the present action, which is definitely in accordance with law. The learned Counsel also would submit that summons had been issued to the petitioners requiring them to attend before R2 and when this action had been initiated to protect the public interest, the said action cannot be found fault and hence the Writ Petition is liable to be dismissed.

Heard both the Counsel.

It appears that respondent No.2 at the instance of respondent No.1 had initiated the proceedings under Sections 107 and 109 of the Code requiring petitioners to appear before him and it is also stated that this was at the instance of the complaint given by one P.G.Naidu and some others. It is also stated that N.B.Ws. had been issued and the same was published even in the newspapers as news items. As can be seen from the averments made in the affidavit filed in support of the writ petition it is clear

that there appears to be some controversy relating to collection of loans and charging of interest. It is needless to say that this is purely a civil dispute between those parties.

Section 107 of the Code dealing with security for keeping the peace in other cases reads as hereunder:

> "(1) When an Executive Magistrate receives information that any person is likely to commit a breach of the peace or disturb the public tranquility or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquility and is of opinion that there is sufficient ground for proceeding, he may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond with or without sureties, for keeping the peace for such period, not exceeding one year, as the Magistrate thinks fit.
>
> (2) Proceedings under this section may be taken before any Executive Magistrate when either the place where the breach of the peace or disturbance is apprehended is within his local jurisdiction or there is within such jurisdiction a person who is likely to commit a breach of the peace or disturb the public tranquility or to do any wrongful act as aforesaid beyond such jurisdiction."

Likewise, Section 109 of the Code dealing security for good behaviour from suspected persons reads as hereunder:

> "When an Executive Magistrate of the first class receives information that there is within his local jurisdiction a person taking precautions to conceal his presence and that there is reason to believe that he is doing so with a view to committing a cognizable offence, the Magistrate may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for his good behaviour for such period, not exceeding one year, as the Magistrate thinks fit."

It is needless to say that these are the security proceedings and the aim of the security proceedings is not punitive in nature it only preventive in nature. It is surprising that in a matter of this nature where neither the 1st respondent nor the 2nd respondent can invoke the provisions referred to supra, purporting to exercise

powers under the aforesaid provisions the impugned proceedings had been issued. This Court is satisfied that none of the ingredients of the said provisions are satisfied and hence the respondents have no authority or jurisdiction to initiate such action as against the writ petitioners. It is needless to say that to protect public interest the other remedies may be available, but however, definitely the provisions referred to supra are not attracted. Hence, the proceedings initiated by the respondents are definitely misconceived and cannot be sustained in the eye of law.

Accordingly, the Writ Petition is hereby allowed. The impugned proceedings are set aside. But, in the peculiar facts of the case inasmuch as the actions are purported to have been initiated to protect public interest, this Court makes no order as to costs.

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P.S.NARAYANA, J.

Dated 03-12-2004.

Note: L.R.copy to be marked.

B/o

skmr

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice, on this Friday, the Third Day of December Two Thousand and Four.

..... REGISTRAR

To

1 The District Collector, Ongole, Prakasam District.
2 The Revenue Divisional Officer, Ongole, Prakasam Dist
3 The Superintendent of Police, Ongole, Prakasam Dist

4. One Fair copy to the Hon'ble Mr.Justice P.S.Narayana (for his lordship's kind perusal).

5. 8 L.R. copies.

6. The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi.

7. The Secretary, A.P. Advocates Association, Library, High Court Buildings, Hyderabad.

8. 2CCs to G.P. for Revenue, High Court Buildings, Hyderabad, (OUT).

9. 2CD copies